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T&E - 2005 - 03

TO: Larry Doyle, Chief Legislative Counsel, State Bar of California

RE: Project No. 2002-02

SECTION/COMMITTEE AND CONTACT

Section: Trusts and Estates Section
Date of Approval: March 20, 2004

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Digest:

A.B. 205 enacted "The California Domestic Partner Rights and Responsibilities Act of 2003," the provisions of which become effective January 1, 2005. A.B. 205 changed and/or added various sections to the Family Code, one section of the Government Code, and one section of the Statutes of 2002. A.B. 205 did not change the Probate Code. This proposal changes the Probate Code to implement the changes enacted by A.B. 205.

Purpose:

This proposal implements A.B. 205 in the Probate Code insofar as A.B. 205 provides that registered domestic partners, former registered domestic partners, and surviving registered domestic partners, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities,

obligations, and duties under law, as are granted to and imposed upon spouses, former spouses, and surviving spouses, respectively.

Application:

This proposal would become effective January 1, 2006 and would apply to all situations and/or transactions arising after its effective date.

Illustrations:

Absent the enactment of this proposal, it is unclear what the results would be after January 1, 2005 in the following situations:

1. The determination of the character of property as community or quasi-community property on the one hand, versus as separate property on the other hand, in the event of the death of a registered domestic partner and/or in the event of the dissolution of a registered domestic partnership (Probate Code Sections 44, 48, 59 and 78).
2. What the disposition of community property and/or quasi-community property as a result of the death of a registered domestic partner would be, and what the rights of a surviving registered domestic partner in the estate of the deceased registered domestic partner would be (Probate Code Sections 100-147).
3. Whether or not a surviving registered domestic partner is a person protected by the written consent requirement for a nonprobate transfer of community property on death executed by the deceased registered domestic partner without the written consent of the surviving registered domestic partner (Probate Code Sections 5010-5023).
4. Whether or not a registered domestic partner is included in the rules governing ownership of a joint, P.O.D., or Totten trust account between the parties to the account and their creditors and successors (Probate Code Sections 5301-5307).
5. Whether or not a registered domestic partner is included in all the rules governing intestate succession of community property, quasi-community property, and separate property (Probate Code Sections 6401, 6402 and 6402.5).
6. Whether or not a registered domestic partner is a person having the right to remain in possession of the family dwelling for a limited time after the decedent's death (Probate Code Section 6500).
7. Whether or not a registered domestic partner is a person having the right to have set aside property exempt from the enforcement of a money judgment (Probate Code Section 6510).
8. Whether or not a registered domestic partner is a person able to elect the benefits of a probate homestead (Probate Code Sections 6521-6528).
9. Whether or not a registered domestic partner is a person having the right to a family allowance (Probate Code Section 6540).

10. Whether or not a registered domestic partner is a person having the right to have a small estate set aside for himself or herself (Probate Code Sections 6602-6611).

11. Whether or not a surviving registered domestic partner is a person having the right to be appointed as the administrator of the decedent's intestate estate (Probate Code Sections 8461-8465).

12. Whether or not a surviving registered domestic partner is a person having the right to take community or quasi-community property without probate administration (Probate Code Sections 13500-13660).

13. Whether or not a surviving registered domestic partner is a person within the protection and responsibility of the allocation of debts between a deceased registered domestic partner's trust and a surviving registered domestic partner (Probate Code Sections 19320-19330).

14. Whether or not a surviving registered domestic partner is a person having the right to take the statutory share of an omitted registered domestic partner (Probate Code Sections 21610-21612).

Documentation:

The subcommittee is not aware of any specific studies, reports, statistics or documentation.

History:

No history of a similar legislative proposal exists.

Pending Legislation:

No pending legislation is known.

Likely Support:

The subcommittee believes this proposal should not be opposed on substantive grounds because the proposal makes no substantive change but merely implements the substantive policy adopted in 2003 in A.B. 205. Nevertheless, the proposal may be opposed by persons who opposed A.B. 205 on philosophical grounds. The subcommittee believes this proposal will be supported by lawyers who practice in the trusts and estates area and in the family law area.

Fiscal Impact:

The legislation should have little or no fiscal impact.

Germaneness:

This proposal is directly related to the practice of the members of the Trusts and Estates Section. This proposal will reduce and/or eliminate issues which would otherwise arise under the Probate Code as a result of the enactment of A.B. 205.

Text:

1. SECTION 1. Section 37 of the Probate Code is amended to read:

37. (a) “Domestic partner” means one of two persons who have ~~filed a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code, provided that the domestic partnership has not been terminated pursuant to Section 299 of the Family Code~~ *established a domestic partnership meeting the requirements of Section 297 of the Family Code which has been registered with the Secretary of State.*

(b) ~~Notwithstanding Section 299 of the Family Code, if a domestic partnership is terminated by the death of one of the parties and Notice of Termination was not filed by either party prior to the date of death of the decedent, the domestic partner who survives the deceased is a surviving domestic partner, and shall be entitled to the rights of a surviving domestic partner as provided in this code. A former domestic partner is one of two persons who established a domestic partnership meeting the requirements of Section 297 of the Family Code which was registered with the Secretary of State and which was thereafter terminated under Section 299 of the Family Code, or by an order dissolving the domestic partnership.~~

(c) A surviving domestic partner is one of two persons who established a domestic partnership meeting the requirements of Section 297 of the Family Code which was registered with the Secretary of State and which was thereafter terminated by the death of the survivor's domestic partner.

2. SEC. 2. Part 20 (beginning with Section 875) is added to Division 2 of the Probate Code, to read:

875. A domestic partner shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties as are granted to and imposed upon spouses.

876. A former domestic partner shall have the same rights, protections and benefits, and shall be subject to the same responsibilities, obligations, and duties as are granted to and imposed upon former spouses.

877. A surviving domestic partner, following the death of the other partner, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties as are granted to and imposed upon a surviving spouse.

878. A legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in the Family Code, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership.